

No. 12,314

IN THE

United States Court of Appeals
For the Ninth Circuit

MIKE ERCEG,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

REPLY BRIEF OF APPELLANT.

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STATEMENT.

The Appellant in this case filed his complaint on the 21st day of April, 1949, within 90 days after the Defendant Contracting Agency denied his claim.

(a) The Plaintiff agrees that the Statute of Limitations of the Territory of Alaska would bar any claim of the Plaintiff, if the Statute were applicable.

(b) It is agreed that, if this action were brought under the provisions of the Tucker Act, the action would likewise be barred, if the Tucker Act were applicable.

(c) The action however, is filed under the Contract Settlement Act of 1944, Title 41, Chapter

2, and in accordance with the provisions of Section 113c, within 90 days after the Administrative denial of the Contracting Agency, of Plaintiff's claim.

(d) Defendant seems to admit Plaintiff is the holder of a war contract.

(e) Defendant seems to admit Plaintiff is a war contractor.

(f) Defendant seems to admit that Defendant is a Contracting Agency with authority to enter into a war contract.

(g) Defendant contends that the Contract Settlement Act of 1944 is not applicable to Plaintiff and that this suit could only be brought under the Tucker Act, upon which the Statute of Limitations has run.

(h) Defendant contends that Plaintiff's claim is not a termination claim as defined under Title 41, U.S.C., Section 103h and Section 103d, and in fact, does not come under any of the Sections of Title 41, Chapter 2.

(i) Defendant further contends that under the provisions of Title 41, Chapter 2, Sections 117 and 118, that since Plaintiff is the holder of a formal contract, he could not come under any of the Sections just cited, so as to bring his claim within the Act.

QUESTIONS INVOLVED.

The applicability of the Contract Settlement Act of 1944 to this Action.

I. THE PLAINTIFF'S CLAIM IS ONE COGNIZABLE UNDER THE CONTRACT SETTLEMENT ACT OF 1944 AND HIS ACTION IS THEREBY BROUGHT WITHIN THE TIME REQUIRED BY LAW.

The Contract on which the Plaintiff relies is one of a lease for an indefinite term to be terminated at the option of the Defendant, when the Defendant has done such work as was necessary in drilling wells upon its Air Base at an agreed daily or monthly rental. And, it further appears from the complaint of the Plaintiff that the Government did use the equipment until the first day of December, 1942 when it, at its option, terminated the Contract.

The purpose of the Contract Settlement Act of 1944 as set out in Title 41, Section 101, U. S. C. Annotated, is to assure prime contractors, sub-contractors, small and large, speedy and equitable settlement of claims under *terminated war contracts* and adequate interim financing, until such settlement. The term, termination claim, means any claim or demand by a war contractor for *fair compensation* for the termination of any war contract and *any other claim under a terminated war contract*, which regulations prescribed under this Act authorize to be asserted and settled in connection with any termination settlement. (Title 41, U. S. C. 103h, Section 3h.) (Italics ours.)

For these reasons Appellant has a valid termination claim and has placed himself within the provisions of the Contract Settlement Act of 1944.

Dated, Fairbanks, Alaska,
January 6, 1950.

ROBERT A. PARRISH,
Attorney for Appellant.